IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR

::JUDGMENT::

TEMPLE OF DEITY BHAIRUJI MAHARAJ AND ANR. Vs. CIVIL JUDGE (JD), SHAHPURA & ORS.

D.B.SPECIAL APPEAL (WRIT) NO.1367/2006 UNDER SECTION 18 OF THE RAJASTHAN HIGH COURT ORDINANCE 1949 READ WITH ARTICLE 215 OF CONSTITUTION AND APPLICABLE RULES AGAINST THE JUDGMENT DATED 31.10.2006 PASSED IN SBCWP NO.2832/2005.

DATE OF JUDGMENT ::: 2.2.2007

PRESENT

HON'BLE MRS.GYAN SUDHA MISRA,J.
HON'BLE MR.K.C.SHARMA,J.

Mr. NK Maloo for the appellant.

BY THE COURT:

The appellants are defendants in a suit for declaration of title and grant of permanent injunction filed by the plaintiff-respondents. During pendency of the suit, the defendant-appellants filed an application for cross-examination of a witness, who had deposed orally, which has been denied by the trial Court. The plaintiff-appellant filed a writ petition under Articles 226 & 227 of the Constitution of India before the learned Single Judge which was rejected against which this appeal has been preferred.

Learned counsel for the appellants submitted that denial of right of cross-examination of a witness is bound to result into grave injustice and prejudice to the case of the

defendant-appellants. We however, find no substance in this plea as in the suit for permanent injunction and possession it is essentially the document of the title and oral evidence in totality with regard to the actual physical possession which will have to be considered by the trial Court on merit. We are not prepared to accept the contention that merely because one witness has not been allowed to be cross examined by the defendant-appellant, the same is going to result into grave injustice or prejudice to the case of the defendant-appellant as it will still be available to the defendant-appellant to urge all these questions before the trial Court at the stage of hearing regarding the effect of denial of his right to cross-examine a witness as also the question whether denial of cross-examination of just one witness can at all have any value or impact on the merit of the plea of the defendant-appellant under the existing facts and circumstances of the matter.

For all these reasons, we do not find any merit in this appeal and hence it stands dismissed at the admission stage itself.

(K.C.SHARMA)J. (GYAN SUDHA MISRA)J.

PCG